(e) the steps being taken by Government for the early implementation of Fifth Pay Commission Report?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATPAL MAHARAJ): (a) to (e) The Government have already taken decisions on the major recommendations of the Fifth Central Pay Commission on 18th July, 1997.

Replacement of FERA by FEMA

708. SHRI NARENDRA MOHAN; Will the Minister of FINANCE be pleased to state:

(a) whether the Foreign Exchange Regulation Act (FERA) is to be replaced by Foreign Exchange Management Act (FEMA);

(b) if so, whether with this replacement, FERA cases would be shelved; and

(c) if so, whether this will not give unintended benefits to offenders under FERA?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATPAL MAHARAJ): (a) to (c) The Government proposes to repeal FERA, 1973 and replace it by Foreign Exchange Management Act, (FEMA), the draft of which is under consideration of the Government.

Steps to ensure transparency of rules/ regulations relating to customs

709. SHRI PARMESHWAR KUMAR AGARWALLA: Will the Minister of FINANCE be pleased to state:

(a) what action has been taken by Government to make ruels, regulations, procedures, guidelines, etc. relating to Customs to make them transparent and unambiguous in the liberalised regime;

(b) whether there are any litigations/ disputes due to non-transparency of such rules, regulations etc. and therefore, requiring clarifications, interpretations etc;

(c) if so, their number during each of last three years; and

(d) what action has been taken to settle the litigations/disputes expeditiously to unable smooth functions of the system in the liberlised regime?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATPAL MAHARAJ): (a) To make the rules, regulations and procedures more transparent and user friendly, active consultation is undertaken with the Trade and Industry Associations and other Ministries before these are framed and notified. In addition, the reactions of different user groups are obtained and discussed in Open Houses, Customs & Excise Adivisory Council, Regional Advisory Councils and Public Grievance Committee to improve and amend the rules, regulations etc.

(b) to (d) Litigation and disputes in tax matters generally arise on account of differences in interpretation where there is a claim for duty concession or in the area of classification and valuation of the goods. There is hardly any litigation on account of non-transparency of Rules and Ragulations.

Application of the concept of unjust enrichment

710. SHRI PARMESHWAR KUMAR AGARWALLA: Will the Minister of FINANCE be pleased to state:

(a) whether it is a fact that concept of "unjuset enrichment" is applicable only on cases of customs duty and excise duty;

(b) if not, which are the other areas on which this concept is applicable;

(c) under what circumstances excess duties/ charges collected by Customs/Excise Departments are not refunded, taking shelter under "unjust enrichment" concept and even after receipt of requisite clarifications/ judgements in favour of assessees;

(d) whether such excess amounts collected are not refundable, even when assessees produce documentary or other evidence showing that burden has not been shifted to clients/ consumers; and

(e) if not, the reasons therefor?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATPAL MAHARAJ): (a) and (b) Concept of "unjust enrichment" is applicable in the cases of indirect taxes where the incidence of such taxes is ultimately borne by consumer including customs/excise duty, service tax, cess etc.

(c) The excess duty charged/collected by customs/excise department are not refunded under unjust enrichment clause in those cases in which burden of duty has been passed on to the buyers. In such cases the refund amount is to be credited to the Consumer Welfare Fund. This holds good notwithstanding anything to the contrary contained in any order or direction of Appellate Tribunal or any Court or in any other provisions of the Central Excise Act, 1944 and Customs Act, 1962 or the Rules made thereunder.

(d) and (e) Wherever the assessee establishes that the burden of duty has not been shifted to consumer, the excess amount collected from them is refundable.

The law in the case of 'unjust enrichment' has recently been laid down by Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. U.O.I. [1997(89) ELT 247 S.C.].

MODVAT on returnable glass bottles

711. SHRI V. NARAYANASAMY: Will the Minister of FINANCE be pleased to state:

(a) whether the Ministry had at any stage made MODVAT available on returnable glass bottles;

(b) if so, the reasons for its withdrawal;

(c) the reasons for not introducing MODVAT on investment in returnable glass bottles and plastic crates used by the aerated water industry; and

(d) the monetary benefit to the aerated water industry if MODVAT is made available on investment in returnable glass bottles and plastic crates used by the aerated water industry?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATPAL MAHARAJ): (a) to (c) As per the Central Excise Rules governing MODVAT scheme, credit of duty paid on packing materials or containers, is not permissible if the cost of such packing materials or containers is not included in the value of the final product in terms of the provisions of Section 4 of the Central Excise Act. Prior to 1.3.94, aerated waters were chargeable to excise duty at specific rates and the question of determination of value under said section 4 did not arise, Therefore, the bar in availing Modvat credit on packing materials or containers did not apply. With introduction of ad-valorem rate of duty on aerated waters with effect from 1.3.94, the provisions of Section 4 became operational in respect of aerated waters. Accordingly, credit of duty paid on glass bottles and crates was admissible only if the value of such bottles and crates was included in the value of the aerated waters. This fact was required to be ascertained in each case of claim for MODVAT credit. In any case, with the issue of notification No. 36/95-CE (N.T.), credit of duty paid on crates and glass bottles is not permissible with effect from 17.11.1995.

(d) In veiw of (a), (b) & (c) above, the question does not arise.

Legislation regarding payment of tax on dividents by companies

712. SHRI . NARAYANASAMY: Will the Minister of FINANCE be pleased to state:

(a) whether a holding company/investment company be liable to pay Minimum Alternate Tax on dividents received by it from its subsidiaries on which dividends the subsidiary companies have already paid tax as per the recent amendment to the Income Tax Act; and

(b) whether Government propose to introduce suitable legislation to ensure that holding companies do not pay tax twice on dividends, once in the hands of the declaring company and the other as Minimum Alternate Tax in the hands of the holding company?

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SATPAL MAHARAJ): (a) Under Section 115JA of the Income-tax Act, the provisions of Minimum Alternate Tax is not attracted in respect of